

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROBERT NOVAK, d/b/a PetsWarehouse.com,

Plaintiff(s),

-against-

ACTIVE WINDOW PRODUCTIONS, INC.,  
et al.,

Defendant(s).

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**WALL, Magistrate Judge:**

Before the court is a motion by defendants Active Window Productions, Inc. and Mark Rosenstein, seeking dismissal of the action or preclusion for willful failure to produce discovery. The motion is granted in part and denied in part. The court will not dismiss the case, but notes that discovery closed on September 30, 2009 and that the pending motion for sanctions did not stay the discovery deadlines. Whatever discovery has been completed is the discovery that will take this action to trial or dispositive motion practice. Enough of the court's time has been wasted on this matter. To the extent that the defendants seek to preclude the use of any evidence not timely produced by the plaintiff, the motion is granted, with the proviso that the defendants are similarly barred from relying on evidence that they did not timely produce. To the extent that the defendants raised the issue of the plaintiff's failure to respond to requests to admit, the court notes that no motion specifically pertaining to that failure is before it. Each party will bear its own costs on this motion.

Dated: Central Islip, New York  
October 5, 2009

**SO ORDERED:**

/s/ William D. Wall  
WILLIAM D. WALL  
United States Magistrate Judge